



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/142777

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on September 18, 2012, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's MA effective April 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Christman, Lead FEP
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On May 14, 2012 petitioner applied for MA requesting a backdate to April 1, 2012.
3. Petitioner's monthly countable income is \$906.

4. On June 15, 2012 the agency issued a notice of decision to petitioner stating that effective April 1, 2012 he could get MA if he met a medical deductible of \$1885.98 for the deductible period of April 1, 2012-September 30, 2012.

DISCUSSION

When a person's income is over the MA medically needy income limit, an MA deductible, also known as a spenddown, must be met before eligibility begins. See Wis. Stats. §49.47(4)(c)2, Wis. Adm. Code §DHS103.08(2)(a), and *Medicaid Eligibility Handbook (MEH)*, §24.2, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The MA income limit for a one-person household is \$591.67. See *MEH*, §39.4.

MA deductibles are calculated for six-month periods. See *MEH*, §24.3. The deductible is calculated by determining if a month's income is more than the medically needy limit, then finding the excess income by subtracting the income limit from the net income of that month, then adding together the excess income of the months in the six-month deductible period. See *MEH* §24.5.1.

In this case, the six-month deductible period was established as \$1885.98 (or $(906-591.76) \times 6$). I have reviewed the county agency's deductible calculations and can find no errors. The petitioner did not argue with the calculations, but argued that it is a hardship for petitioner to meet the deductible. It is the long-standing policy of the Division of Hearings & Appeals that the Department's administrative law judges do not possess equitable powers; i.e., the ability to disregard statutes or regulations based on general considerations of fairness. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). Therefore the county's establishment of the deductible must be upheld.

I do provide the following information to the petitioner about deductibles, how they are met and the possibility of prepayment. Again this is available online, in full, in the *MEH*, §24.7, et seq:

The fiscal test group meets the deductible by incurring medical costs that equal the dollar amount of the deductible. The countable costs are added together. When they are equal to or greater than the amount of the deductible, the group can be certified for Medicaid.

Countable Costs

To be counted toward the deductible, a medical or remedial expense must meet all of the following conditions.

1. Be an expense for a member of the applicant/recipient's .

Expenses may be counted if incurred for someone the member is legally responsible for if that individual could be counted in the member's FTG. The medical bill may be used even if the family member is no longer living or no longer in the current FTG.

Example1: Sally's minor child Ida died of leukemia in April 2004. In September 2004, Sally requests that a medical bill incurred for Ida be used towards her deductible. Sally is still legally responsible for the bill. The bill can be used to meet the deductible as long it did not result in a Medicaid certification in a n earlier period.

2. Meet the Definition of Medical or Remedial expense as defined below.
3. Meet one of the following four conditions
 - a. Still be owed to the medical service provider sometime during the current deductible period.

Expenses which have been "deferred" by the provider are considered a countable cost still owed to the provider and can be used to meet a Medicaid deductible.

- The deferred charge should be viewed as an incurred expense that remains an unpaid obligation for the member.
- If only a portion of the deferred charge was used to meet a prior deductible, any remaining balance can be used to meet future deductibles.
- Many deferred charge situations involve very high costs for the services provided, it is extremely important to document in Case Comments which portion of the deferred charges are used to meet previous deductibles, and any remaining balance that can be used to meet current or future deductibles.

Example 2: From May- July 2007 Helen resided in an Institute for Mental Disease (IMD) and incurred a \$14,000 bill. As of October 2008, Helen has not paid this bill. In October Helen's social worker, Ruth, applies for Medicaid on Helen's behalf.

Ruth tried to help Helen meet her deductible by collecting Helen's medical bills. The "bill" for Helen's IMD stay listed \$14,000 in "Deferred Charges". Ruth questioned what deferred meant. The account's receivable person at the IMD indicated that charges for low-income people are often "deferred." "Deferred", she explained, means that the member would never be billed for the charges, but if s/he happens to come into a windfall of money (lottery or inheritance), they will change the status of those charges to current and try to collect the debt.

Helen can use this "deferred" charge toward her deductible.

Example 3: Lestat applies for Medicaid in July, 2007. An Medicaid deductible of \$700 is calculated for him. In 2006 he had a blood transfusion. The bill for the transfusion was \$800. He never paid it and still owes it to the service provider. He can use the unpaid bill to meet his Medicaid deductible, but must provide documentation to show that the charges are currently owed. The remaining \$100 can be applied to the next deductible period, as long as it is still owed.

- b. Paid or written off sometime during the current deductible period. Medical bills written off through bankruptcy proceedings are not allowed as a medical expense to meet a deductible.

Example 4: Frank and Estelle apply for Medicaid on March 1, 2007, requesting that their deductible period begin January 1, 2007. Their deductible for the period January 1 - June 30th is \$340. In April, they had a ten-year-old medical bill of \$300 written off. They can count the \$300 toward the January - June 2007 deductible because it was written off during the deductible period.

- c. Paid or written off sometime during the deductible period that immediately precedes and borders on the current deductible period. These bills can be used even if they were paid after the person met the deductible in the prior period.

Example 5: Jeffrey is in his second deductible period. He did not meet his deductible in the prior period, which borders on the current period. He has a bill that was written off in the prior period. He can apply this bill to his current deductible.

Example 6: Malcolm is in his second deductible period which began March 1, 2007. He did not meet his deductible in the prior deductible period, which immediately preceded the current deductible period. He has a medical bill that he paid in February 2006. He may not apply this toward his current deductible.

Example 7: Norah is in her second deductible period which began in September 2007. In June 2007, Norah met her deductible and was certified for Medicaid. After certification, and before the prior deductible period ended in August 2007, Norah paid for medical services that were not Medicaid covered services. Norah can apply these paid bills to the deductible period the began in September 2007.

d. Paid or written off some time during the three months prior to the date of application. This expense can only be used for the first deductible period. Balances cannot be carried forward to future deductible periods.

Example 8: Mr. and Mrs. Avenue apply for Medicaid on August 10th, 2007, requesting that their deductible period begin on August 1, 2007. Their deductible for the period from August 2007 through January 2008 is \$1500. On May 10th the couple paid off a \$2000 outstanding medical bill. They can use that expense to meet their deductible because it was paid in the three months prior to the date of their application. The remaining \$500 cannot be applied to future deductible periods.

Countable Expenses

The following are expenses that can be counted against the deductible if they meet the conditions listed above in Countable Costs:

1. Medical expenses. Medical expenses are costs for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state) regardless of whether the services or goods are covered by Medicaid. Medical expenses for services or prescriptions acquired outside of the United States may be counted toward a deductible if a licensed medical practitioner or pharmacy provided the service or drug.

Some examples of medical expenses are deductibles and co-payments for Medicaid, for Medicare, for private health insurance; and bills for medical services which are not covered by the Wisconsin Medicaid program.

Note: MMIS data may be used to calculate Medicaid co-payments from the previous deductible period.

2. Remedial expenses. Remedial expenses are costs for services or goods that are provided for the purpose of relieving, remedying, or reducing a medical or health condition. Some examples of remedial expenses are:

- a. Case management
- b. Day care.
- c. Housing modifications for accessibility.

- d. Respite care.
- e. Supportive home care.

Supportive Home Care is necessary assistance to help people meet their daily living needs, ensure adequate functioning in their home, and safely access their community.

Services may include:

- Assistance with activities of daily living
- Attendant care
- Supervision
- Reporting changes in the participant's condition,
- Assistance with medication and medical procedures which are normally self-administered, or
- The extension of therapy services, ambulation and exercise.
- Tasks associated with routine household upkeep, including general housekeeping chores, lawn mowing, snow removal, changing storm or screen windows and other household services that are essential to the participant's safety, well being and care at home.

- f. Transportation.

g. Community Based Residential Facility, Adult Family/Foster Home (AFH), Residential Care Apartment Complex (RCAC), and all other community substitute care setting program costs not including room and board expenses.

Remedial expenses do not include housing or room and board expenses.

CBRF, AFH, RCAC, and all other community substitute care setting program costs, not including room and board expenses, can be counted as a remedial expense only as they are incurred. CBRF, AFH, RCAC and all other community substitute care setting program costs will be considered incurred as of the date that the member is billed for these expenses by the CBRF, AFH, RCAC or other community substitute care setting. The billing procedure used by the CBRF, AFH, RCAC or other community substitute care setting (one month in advance, bimonthly, etc.) for Medicaid residents should be the same as that which is used for its non-Medicaid residents.

In determining how much of a CBRF, AFH, RCAC or other community substitute care setting expense can be applied to meet a medical deductible, use the facility 's breakdown of the room and board versus program costs, with the program costs to be applied to the deductible.

3. Ambulance service and other medical transportation (21.4.2 Transportation , including attendant services (21.4.2.3.3 Transportation>Common Carrier>Reimbursement>Attendant).

4. Medical insurance premiums paid by a member of the fiscal test group or FFU. These insurance premiums include disease specific and per diem hospital and nursing home insurance payments. Do not allow accidental insurance policy premiums as a countable cost.

Note: Unlike other expenses listed in this section that may not be applied toward a deductible until they are incurred, count medical insurance premiums from the first day

of the deductible period, if the premium will be coming due anytime during the current deductible period.

5. Medical bills paid by a party who is not legally liable to pay them can be counted against a deductible..

Examples of parties that pay medical bills when not legally liable include, but are not limited to: Churches, fraternal organizations, Children's Special Health Needs Unit of the Division of Public Health, Veterans Administration and the AIDS Drug Assistance Program (ADAP).

6. Medical services received at a Hill-Burton facility. The Hill-Burton Act was enacted by Congress to provide federal assistance for the construction and modernization of health care facilities. Medical facilities which receive Hill-Burton assistance must provide without charge a reasonable volume of services to persons unable to pay for those services.

7. In-kind payments. These are services or goods supplied to the provider in lieu of cash. Self declaration of the bill being satisfied is adequate verification.

8. Medical or remedial expenses that are paid or will be paid by a state, county, city or township administered program that meets the conditions detailed in 24.7.1. # 3.

Examples include:

- a. General Assistance
- b. Community Options Program
- c. AIDS Drug Assistance Program (ADAP)

Example 9: Fred receives a medical service which will be paid by ADAP. When Fred comes in to apply for Medicaid and has to meet a deductible this medical bill that has not been paid can be used immediately because it will be paid by the state administered ADAP program.

Example 10: Sally received a medical service in January 2008 which was paid by the state administered, state funded Community Options Program in the same month. In February Sally applies for Medicaid requesting a backdate to January 2008. Sally has excess income and must meet a deductible. Since the medical bill was paid by COP within three months of Sally's Medicaid application it can be used to meet Sally's Medicaid deductible.

9. Medical or remedial expenses that have been paid or will be paid by Indian Health Services that meet the conditions detailed in 24.7.1 # 3

Example 11: On January 1, Michael received a medical service which will be paid by Indian Health Services. When Michael applies for Medicaid on January 10 he has to meet a deductible. The bill for the January 1 medical services may be used immediately because it will be paid by the Indian Health Services program.

Example 12: Charlie received a medical service in January 2008 which was paid by Indian Health Services in the same month. In February Charlie applies for Medicaid requesting a backdate to January 2008. Charlie has excess income and must meet a deductible. Since the bill was paid by Indian Health Services within three months of

Charlie's Medicaid application it can be used to meet Charlie's Medicaid deductible.

10. SeniorCare Enrollment Fees

Noncountable Costs

Do not count the following toward the deductible:

1. Medical bills written off through bankruptcy.
2. Medicare Supplemental Medical Insurance (Plan B) premiums if they have already been deducted from the gross social security check.
3. Medical services payable or paid for by a third party who is legally liable for the bill. This includes bills that will be paid or have been paid by Medicaid, Medicare, or other Insurance.

Example 13: Medical services provided to an incarcerated person. In this case, the incarcerating authority is the legally liable third party.

4. A bill cannot be used if it has been used to meet a prior deductible. If only a portion of an unpaid bill was used to meet a prior deductible, any remaining balance that was not applied to the prior deductible, may be applied to a subsequent deductible period as long as it is still owed or meets criteria in 24.7.1 Countable Costs.

Example 14: The court orders a health insurer or other third party to pay for medical services.

Example 15: An applicant incurs a \$300 medical bill. She applies the \$300 toward her deductible even though s/he has not made any payments on the bill. She meets her deductible and is certified for Medicaid. Three years later she applies for Medicaid again and a deductible is calculated for her. She now pays the \$300 bill. But she cannot use it to meet her current deductible because she already used it to meet the prior deductible.

Prepaying a Deductible

Anyone can prepay a deductible for himself/herself or for someone else. It can be paid in installments or all at once. A prepaid deductible may be refunded if the member requests a refund of the prepayment **prior** to the begin date of the corresponding deductible period.

If the member is **55 or older**, forward the payment to:

ForwardHealth
Estate Recovery/Casualty Collections
313 Blettner Blvd
Madison WI
53714-2405

Prepayment checks or money orders should be made payable to: "The Department of Health and Family Services."

With the payment, include:

1. Documentation that the payment is voluntary.
2. The member's name and Medicaid ID number.

If s/he is **under 55**, instruct the member to make the payment payable to your IM Agency. Report the receipt on the Community Aids Reporting System (CARS) on Line 909.

Payment of Entire Deductible Amount

If the entire deductible amount is paid at any point during the deductible period, eligibility begins on the first date of the deductible period.

Example 16: Laura's deductible period is from March 1st through August 31st. The total deductible amount is \$1,000. Laura submits payment of \$1,000 on August 15th. Laura's Medicaid eligibility begins on March 1st.

Combination of Payment and Incurred Expenses

If the deductible is met through a combination of payment and incurred medical expenses, count the incurred medical expenses first. Eligibility, by paying the remaining deductible amount, can begin no earlier than the last date of incurred medical expense within the deductible period.

Example 17: Chad's deductible period is from March 1st through August 31st. The total Medicaid deductible amount is \$1,800. Chad submits a medical bill with a March 8th date of service for \$800. On July 15th, he submits payment of \$1,000. Chad's Medicaid eligibility begins March 8th. Submit a Medicaid Remaining Deductible Update (F-10109) identifying the provider of service on March 8th and the \$800 member share amount.

Combination of Payment and Outstanding Expenses

If the deductible is met through a combination of payment and outstanding medical expenses (incurred prior to the beginning of the deductible period), eligibility begins on the first date of the deductible period.

CONCLUSIONS OF LAW

That the agency correctly calculated the amount of the Petitioner's Medical Assistance deductible effective April 1, 2012.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

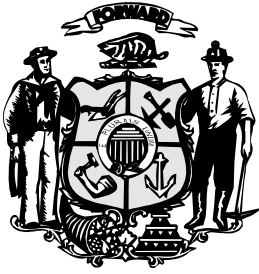
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of September, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Racine County Department of Human Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 20, 2012.

Racine County Department of Human Services
Division of Health Care Access and Accountability